CERTAIN RETROGRESSIVE POLICIES OF THE PROGRESSIVE PARTY

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I do not wish to discuss these questions from a partisan point of view; for I am by no means opposed to all of them. But some study of the history of English legislation has made me appreciate not only the lack of novelty of these processes, but that there is a lesson to be drawn from the study of those early times, when in fact they were the usual method of making, of interpreting, and of executing, law. Our knowledge of these matters has come to us recently, mostly from the efforts of German scholars. We learn nothing from Blackstone; while even writers of the Bentham-Austin School wrote in more or less complete ignorance of the past history of Anglo-Saxon institutions, and with thought processes consciously or unconsciously based on the later Roman law. And so there is a school today, that would make the executive all powerful, not merely in the administration of government, but in declaring and executing the law; having as an object efficiency, not liberty, with institutions based on a benevolent State, not on a democratic people. Such schemes are ever attractive as a short cut to results, particularly so in this country where the best meant efforts of a central government are sometimes controlled and dissipated by the local government of the States. This, however, is a larger question; I shall henceforth confine myself to the four or five precise reforms which have been recently recommended to us.

I. INITIATIVE, REFERENDUM, AND RECALL

Taking the simplest, though not perhaps the oldest, first, the referendum, with its supposed twin brother the initiative, seems to have completely taken possession of the imagination of the American people. There is now an apparent conviction in nearly half the States of the Union that this reform in legislative process is not only a cure-all, but a new discovery. But the referendum has been practised in Massachusetts in ordinary legislation for something like two score years; the most world-famous referendum in all history is provided by our method of

adopting state constitutions and constitutional amendments throughout the Union; the referendum in all matters of local import or application, such as laws imposing local taxes, authorizing local improvements or granting franchises at the expense of the public of certain localities, has been for many years in party platforms—and finally there is no doubt that the referendum existed among the Teutonic tribes which first occupied England, in all essential particulars precisely like the referendum recommended now; except, of course, such differences as are caused by the use of writing and printing. In the earliest development of Teutonic polity the whole tribe met to *declare* as well as to administer, the law.[1] Before the days of courts and legislatures, before the invention of representative government, the Germans, called together in universal council, voted upon the law as referred to them by a party litigant.[2] Probably this was not at first done in the abstract. The primitive mind is directed mainly on the concrete. It prefers the recall of a judicial decision to a constitutional amendment. Such referendums were, therefore, usually the result of a dispute between individuals. The party plaintiff, or, more usually, in criminal cases the party defendant—for in those days a party first executed the law and justified or tried it afterwards—would claim a certain law as part of the custom of the men of the tribe, before the whole body of free or fighting men when next the tribe met in conclave; and the primitive referendum was probably a vote of aye! signified by the clash of spears. The law thus declared, the defendant party would promise to justify, or, failing to do so, by oath of a sufficient number of compurgators, to submit to the appropriate ordeal.[3] Necessarily these referendums, though made in individual cases, fixed the law; just as a judgment of court would do today; only even more strongly, because they were made by and known to all the free members of the tribe. And there is evidence of the true referendum as we would have it today; that is to say, when a certain custom, declared abstractly to the tribal meeting, would be acclaimed as true law, if not new law, and for instance, "added to and recognized as part of the free customs of the men of Kent."[4]

It appears, therefore, that the modern referendum was in use for centuries among Teutonic tribes or in Anglo-Saxon kingdoms, beginning

[1] Freeman, *Growth of the English Constitution*, pp. 1-21.

[2] Schmid, *Gesetze der Angelsachsen*, Einleitung, Sec. 4.

[3] Jenks, *Law and Politics in the Middle Ages*, chap. 4, and summary.

[4] *Dooms of Wihtread*, Schmid, p. 15; *Laws of Ine*, ibid., p. 21; *Laws of Alfred*, ibid., p. 69.

probably with the first development of tribal polity out of the individualism of savagery, and lasting down to the time when we begin to have records of the Saxon institutions and of the proceedings of council or courts.

Now why was it abandoned? Simply because of two things; The development of the court, and the invention or evolution of representative government; the one great political principle the Anglo-Saxon race has always been said to have invented. It is true that in so far as the courts succeeded to this function, they only declared the law as it had always existed; the notion that law was a permanent truth, venerable if not divine, being always persistent in the Teutonic mind. Nevertheless the line between stating the law and formulating new law is easily overstepped; and the courts doubtless made new laws, as had their predecessors, the general assemblies or witans. And as the courts developed, that part of law-making which really was constructive was left to "the Great Council, which soon became a representative assembly, the modern Parliament," mother of legislatures. But there was for a long time no "initiative." It is doubtful if the earliest tribal assemblies would have dared make one; and it is certain that, leaving out a few matters like the artificial importation of feudal, Roman and Church law, the early great councils, later the parliaments, rarely pretended to more than declare the law as it already existed. Some constitutional historians agree in fixing on the Statute of Laborers as the first piece of constructive legislation by parliament (1350); others put it as late as the Statute of Wills (1535); in the Great Code of Westminster First (1275), where the very word "parliament" was first used, they seem for the first time to be contemplating the possibility of what we should call *legislation.* And the word "statute," first used in 1235 in the Statute of Merton, means—"It is decreed" or "declared." The notion of new law grew in two ways: First, the desire of the Norman kings to make law an imperial decree, law in the Roman or Austinian sense; secondly, the desire of the people to restore their early Saxon law, which was conceded to them by the Norman kings in *charters,* not in *statutes,* and led to the process of law-making by petition, addressed nominally by the parliament to the crown. And parliament early became a truly representative body, if anything, more so in the thirteenth than in the eighteenth century, and the people of England were satisfied that it was so, however much it may have represented only the land owning classes. Thus disappeared the popular initiative and referendum, though new law was perhaps made in the courts.

I hold, therefore, that the referendum has been one of our institutions in the past; that it is perfectly proper, nay useful to revive it in the present, and the only objections to it are, whether it is in all cases necessary, and the argument of inconvenience. I have not time to more than advert to the experience you are all familiar with of the States which have adopted the referendum, in the practical difficulty, expense and uncertainty of getting the proposed law, in good form, to and from the people.

The initiative is a more radical departure from representative government, and possibly a more risky experiment. It came a little later than the referendum. We may guess that there was no true initiative lawmaking among the Saxon tribes while they were in the forests of Germany; but we very soon find it in the records of the Saxon kingdoms in England. All the members of the kingdom did in fact assemble (to the number, it is said, of sixty thousand),[5] in some place like Salisbury Plain, and we have records of some such phrase as that already quoted that certain propositions are declared the general law and added to the customs of the kingdom. Later King Alfred draws up a code which may be in part new law, and says in effect, that with the counsel or consent of his wise men he has added it to the laws of the realm.[6] Now this initiative was, of course, abandoned when the general mass meeting of free men became the meeting of wise men—the Witenagemot, and entirely disappeared when such bodies became frankly representative, which they early did. We know that four leading men of the shire or Hundred appeared as representatives of the whole, centuries before that famous summons of John in 1213,[7] inviting representatives of the commons to that assembly which led to the Magna Carta. Simon de Montfort in 1265 added representatives from the cities and towns. The initiative, therefore, began with the first meeting conscious not merely of military but of legislative and judicial power, which ever a Teutonic people held; it has no more perfect example than the New England town meeting; and it ended in England with the perfection of representative government It commonly (but not always) arose out of a concrete matter of individual dispute; and it differs from the modern initiative being adopted in our States, only in that there was no second reference, no referendum of the law proposed by initiative to the people, because, of course, the con-

[5] Hannis-Taylor, i, 269.
[6] Schmid, *Alfred and Gutbrun's Peace*, p. 107.
[7] Hannis-Taylor, ii, 12.

stituent body of the people was there, both to make the law and to vote upon it.

We have always had the initiative in America in constitution making. We have not hitherto, in Massachusetts at least, supposed it necessary in ordinary law-making, nor in England, for the reason that in both countries it has been possible for anybody to get a bill before the legislature by simple petition. But if, as is possible, that has ceased to be effective in both countries—in England for the reason that no bills are considered save so-called government bills, and with us, because private petitions are promptly pigeon-holed—it is both wise and proper in exceptional instances and under reasonable guarantee to have such measures brought before the people to prevent their being suffocated in legislatures otherwise controlled.

But the point I have again to make is that there is nothing in the least *new* about it; on the contrary, it is very, very old; far older than the civilization and constitution of modern England. The objections to it now are only to its machinery, and that it may tend to degrade legislatures; and in these days of quick printing and rapid and careless talking, the uncertainty in which it would plunge our law, and the insecurity we should feel as to the future, the trouble of continual disturbance, and the danger of legalized blackmailing. Then the initiative, as the States are adopting it, applies not only to laws but to the constitution; and it will be much more effective to apply it, as they are already finding out, to the latter. It is just as easy to amend the constitution while you are about it, as to propose a new law; and very much more effective and satisfactory. The result will, in a very few years, lead to an entire loss of the distinction between constitutions and statutes—that is to say, there will cease to be any constitutions, or law and constitution will be so inextricably intermingled that no lawyer will be able to answer any questions without a law-suit, and even the result of that may be changed by some form of these processes when ultimate decision is reached. We shall then be living in precisely the legal conditions in which people lived in the early Teutonic tribes, particularly, if, as I shall now go on to show, we are logically complete, and place with the people also the execution and decision of the law; and we shall be laboring under the added inconvenience of the invention of writing and printing. In those early German days we can imagine, a man might come to judgment from a general assembly of his tribe without, perhaps, very much uncertainty as to the result. He would not be confused by masses of written statutes, of constitutional amend-

ments, or the records of what other courts or assemblies might have done. Today, unless (as has been urged) all court decisions are to be destroyed and all records of such meetings burned, such would not be the case.

Of the recall of officers, judicial or otherwise, I shall say little. Recall undoubtedly prevailed in the early Teutonic tribes as against an unpopular or unsuccessful chief in war. When officers began to be appointed by a king, he naturally would not leave the recall to his people; and, according to Stubbs, he appointed all his officers for life. When the people themselves elected their officers, as for members of legislatures, or informally chose them, as for county courts, all they would need to do was not to choose again the ones they did not like. This has been substantially the condition of things with us. The question is a concrete one in each particular case, except as to judicial officers, resting merely on the length of the elective or appointive term. There can be no logical dispute that the constituency which has power to elect has power to diselect. But as to the judges, their life tenure was the first fruit of the English revolution; and the Stuarts' misgovernment and our founders' deliberations both led to the independence of the judiciary and the fundamental American principal of separation of the powers. "A principle" (early said Francis Lieber) "it has never been endeavoured to transplant from the soil inhabited by Anglican people . . . . a thorough government of law as contradistinguished to a government of functionaries." This has been so thoroughly discussed by many, from President Taft down, that I can well afford to omit it here; only saying with Daniel Webster that the phrase in the Massachusetts constitution—"to the end that it be a government of law and not of men" and (I should add) the phrase "law of the land" in Magna Carta, are perhaps the grandest words for freedom in the world's history. A judge should be recalled by the law, and not because he executes the law.

II. RECALL OF JUDICIAL DECISIONS

Here we have come to the matter whereupon I want most earnestly to invite your consideration of history. This, indeed, is the first of these modern reforms which by any possibility may be said to embody anything new;[8] but one might well suggest that it be logically carried

[8] Even this may be doubted, "Lastly, the Witan acted as a Supreme Court of Justice, both in civil and criminal causes." Kemble, *Saxons in England*, ii. 215 (quoted in *Taswell-Langmead*, sixth edition, p. 27).

out. And if it be, it is certainly nothing new but again something very, very old. When the first Saxon law court evolved out of the meeting of the tribe, or the leading men of the shire, or the neighbors of a hundred, we may not doubt that our ancestors thought that court a fine invention. So proud were they of it that they would not permit any litigation even before the king that had not first passed through the county court; and the probability is that having discovered this great convenience of civilization, doing away with crude methods of vengeance, ordeal or battle, the proposal to go back to a popular judgment, either on a concrete controversary or on the law controlling such a controversary, would have impressed them as the proposal of one who, having constructed a modern steamship would say "let us take the pieces apart again and put them together as a raft." Yet there may have been a time—a transition time—when the nascent courts were not so specialized, so differentiated, as to be beyond general popular control; when their decisions were subject to the approval, or at least to the reversal, of that general body of free men, who though suitors in the court, made up in those days, the Bench as well. For then all those who had to go to court, or who took the trouble to go to court, in a body judged one another. One has only to suppose that such a dispute or disagreement might arise as would incite the rest of their neighbors to a reversal of their judicial decision, and you have this modern doctrine. But this, after all, is a half-way state of things, and it is doubtful if one can now remain there, any more than they could in the fifth or sixth century. The logical and effective system is that still farther back, which prevailed for thousands of years among every Teutonic tribe of which we have any knowledge whatever—German, Saxon or Scandinavian; a system which lasted for a far greater number of centuries than the present court system and the modern notion of executing the law by government officials or others than the parties immediately concerned. A system which probably all Teutonic peoples, certainly those of which we have the earliest recorded evidence—namely, the Anglo-Saxon and Icelanders—adopted, as soon as the individualism of savagery gave place to tribal civilization; and which lasted until the development of the perfectly modern notion of executing justice by and through the State.

That is to say, law was eternal, immutable (save as modified by tribal initiative, as has been said) and known to everyone. When a man had a dispute with another he executed his own law; this was the first stage, and it lasted for thousands of years. If there was appeal to the tribe,

or later, to something like a court, he was tried, not for executing the law himself, not for the slaying or maiming or forcible seizing of cattle, which he had committed, but for the fact whether he was *justified* in so doing; whether, in so murdering, killing or seizing the goods, he was *within his law* or an "*outlaw*;" he was tried, not for what he did, but (in a sense) for what he thought. The *motive* was tried;[9] and the law was declared; and the judgment preceded the proof of facts just as the execution, even by a court, preceded the trial; and when there grew to be a state, and something like government execution of legal judgments, it still remained true that the people in popular assembly, and later the same people, or a selection of them in courts, both declared and executed the law. I have but to remind you of all this history. The words of Schmid, Brunner, and Liebermann, Stubbs, Freeman and Professor Jenks, and of our own American scholars, amply show this. I would only quote the very first sentence of Henry Adams' *Essays on Anglo-Saxon Law*:

> The long and patient labors of German scholars seem to have now established beyond dispute the fundamental historical principle, that the entire Germanic family, in its earliest known stage of development, placed the administration of law, as it placed the political administration, in the hands of popular assemblies composed of the free, able-bodied members of the commonwealth.[10]

The recall of judicial decision, therefore, is the extension of an old principle, or the adoption, in part only, of a still older one. Why, instead of having only the recall of judicial decision—which I take it means the recall of a judgment, not of an abstract principle (in which latter case it is legislation)—why not have a popular *making* of judicial decision? Why should we stop half way? And why again, if we get to that point, should we not return to our older system of having the first execution of the law made by the individual?

It is simpler, for it does away with much of the law's delay; it is cheaper for the state; it is far more effective and expeditious for the individual. Much is to be said for it, and I am going to remind you of a few examples of its existence in modern times.

It is well known that there are large classes in all communities which live still in the last preceding sociological age; not only in their ideas and their mode of life, but in their customs—that is to say their laws. They

[9] H. C. Lea, *Superstition and Force*, p. 68.

[10] Henry Adams, *Anglo Saxon Law*, p. 1.

understand and observe the last condition of things, not the present; just as the hunter does for sport what his ancestors did as a means of existence; just as we have farmers, and fishers, gipsies and nomads, so criminals—or what we call criminals—the underworld, the simpler world, is living under a state of law, perhaps not so considered by them, but exactly the state of law which existed in an earlier political evolution. And I am going to call your attention very earnestly to the condition of law, for it is law of a sort, and that one of the oldest if not the best sorts—which famous trials in New York and elsewhere have recently shown us is still existing in large classes of the community. I refer to the trial of the New York Gunmen, so called, the underworld generally, to a certain extent an organized class or status, and the police —they are bound in a sort of frankpledge to them and for one another. It seems that we here have an exact survival of earlier conditions.[11] When one man deems himself injured by another he executes his own law.[12] Suppose, for instance, a member of a gang or clan is betrayed to the "front" office by a fellow-member; having satisfied himself of the fact, he puts the other out of the way. As the Church used to put it in the early inquisition days, he hands him over to the secular arm; which may be his own or those of his gangsmen. Undoubtedly he has to justify that action before a court—that is to say, a convocation of the gangs. If it be shown that the man whom he "croaked" has been guilty of the unpardonable sin of going to the "front," or of taking his girl, not only his own gang, but probably the gang of the deceased will find a verdict of acquittal. Something even resembling the old Saxon Wite, or blood money—that first improvement on the law of vengeance—may be traced; as when a contribution is taken by one or both of the gangs for the widow or family of the deceased. And the only thing the underworld cannot understand is that there should be a law-suit about it—that is to say, a trial in the extraordinary and artificial procedure of the state courts, when the slayer has already had his trial in their own court. This complication appears to strike the denizens of the East Side in precisely the same way that the summons or other interference of a law court would have the early Anglo-Saxon. These people, when they come to be "the unsuccessful defendants in a criminal case" as the late

[11] See H. C. Lea, *Superstition and Force*, pp. 49, 76.

[12] *Ibid* p. 173. Lord Ashburton, for the liberals, opposed the bill depriving New Englanders of the right of appeal and trial by battle for murder, calling it "A pillar of our Constitution. It is called a remnant of barbarism and gothicism; but . . . . the whole of our Constitution is Gothic."

Judge Hoar euphemistically entitled convicts, wear the same puzzled, honest look of the eye, that a good dog has when caught in a steel trap in the woods. They are docile, they abide the judgment without understanding it, as one who has lost in a game of hazard; and they do not know how correct historically their attitude is. They are survivals of the past age. They have their own code; they enforce it loyally; they are prepared to pay the blood-wite, and to stand the trial of their peers. Probably no more than the early Anglo-Saxon do they see the need of any state courts at all, or of any regulation of their conduct by law or ordinance. They are "good and lawful men" of a sort, and a good man's liberty should not be controlled.[12] That conception lies at the basis of English law. But if courts have got to be, they would look on the recall of judicial decision as giving them a chance to infuse judicial rulings with a broader and more human spirit. Then there is that other institution, lasting with them still—tribal or gang responsibility—what I have, by no means in metaphor, called the view of frankpledge. Anyone who has been district attorney or in a police commissioner's office, knows that this is the fact today. The members of the gangs are responsible, just as they were in early England, for their own deeds or misdeeds to one another; or even, under certain well defined circumstances, to members of a hostile gang. Not only that, but they are responsible, as they also were in early England, to the state; that is to say, the state as represented in the "front" office of the city superintendent of police; they have their wite, they surrender their outlaw. I need only to refer to the writings of the late Grover Flint and of Alfred Henry Lewis for a good description of this state of things. Now the frankpledge is a much simpler, cheaper, more expeditious and more efficient method of enforcing justice, of a sort, than is afforded by some of our courts.

But leaving New York, let us take another example: lynch law, as it prevails in the south; the unwritten law as it exists in the minds of

[13] See H. C. Lea, *Ibid*, p. 301, on the personal independence of the freeman as a distinguishing characteristic of all Teutonic institutions. "The freeman of the German forests, who sits in council with his chief, who frames the laws which both are bound to respect . . . . .Corporal punishments for him were unknown . . . . .the repression of crime was by giving free scope to the vengeance of the injured party, and by providing fixed rates of composition by which he could be bought off" and "crimes were regarded solely as injuries to individuals, and the idea that society at large was interested in their discovery,punishment and prosecution, was entirely too abstract to have any influence on the legislation of so barbarous an age."

certain distinguished advocates of man-slayers—murderer is too brutal a term—man-slaying in early English law was no crime, nor is it still, in the imaginations of men of that way of thinking. The question is not, did the man kill, but was he right in killing? That is the "unwritten law," and in all seriousness I remind you that this is not an invention of modern newspaper talk, but a hallowed English institution. It is true, we thought we had graduated from it; but many think we graduated too early; the upholders of the duello for instance. I am sure that but a word will be needed to be added on this subject. A moment's reflection will convince you that this condition of society, as exemplified in the speeches of the latest governor of South Carolina, is a perfect example of survival. Governor Blease himself intimates that if the person lynching the negro has made a mistake, he may be tried and condemned for making that mistake. No one in the England of 836 A.D. could ask for more than this. "The right of feud" notes Herbert Spencer in Table II of his *Descriptive Sociology* is "at the root of all legislation; the history of law its progressive limitation."

I am well aware that in taking what may seem to you these extreme examples as illustrations, I may seem not to be in earnest. I pray you to believe that such is not the case. In all sincerity I say that the measures and tendencies of today are only different from those of ancient days in that they are not quite complete; they shrink at the logical conclusion; and there is much to be said for this early condition of society, certainly as compared with inefficient courts or with the rule of functionaries, magistrates, boards, commissioners or other modern cadis whether elected or named by an arbitrary executive, without appeal to the law of the land. Let us therefore, without temptation to be sententious, seriously consider this latest proposal. We have approved, with reasonable limitations, both the initiative and the referendum; under circumstances the recall. And this recall of judicial decision, is, in all seriousness, the suggestion of a genius. Some leading jurists have spoken of it with enthusiasm, and a bill to carry it into our national Constitution is now pending in the national Congress. But how would it work in practice? We have it already in the abstract; that is to say, we can recall the Constitution in any clause of it which compels any judicial decision. Suppose we adopted the thing in the concrete as recommended by the Progressive party. I am well aware that they now limit it to constitutional decisions. One example will suffice, and I will select that of the so-called Bakers' case in New York,[14] for the very reason

[14] Lochner vs. New York, 198 U. S. 45.

that I agree that that may have been a mistaken decision; that is to say the court might well have found that the trade of baking bread bore sufficient relation to the public health to be brought under the police power of the State. It is, however, to be noted, that that case was decided not by the state courts of New York under the New York constitution, but by the Supreme Courts of the United States under the fourteenth amendment of the Constitution of the United States. However inviting this point may be to those who love the argument between the centralizers and the "States' rights" party, I will leave it, for the constitutional phrase in question exists not only in the federal Constitution but in the state constitutions of all the States, and can be traced directly back to the great Chapter 39 of the Magna Carta of King Henry as translated in the famous Confirmation of Charters of Edward III, in 1354, when the phrase "due process of law" first appears. All our state constitutions as well as the federal Constitution do but paraphrase this clause. The courts were therefore in the Bakers' case applying Magna Carta itself. A man may not be deprived of his property, his liberty, his free custom, or his right to labor or trade, but by due process of law; that is to say, it must be by judgment of a court for some offense, not by an arbitrary statute, order or ordinance. The Magna Carta of Henry III put it that he may not be deprived of his "liberties or free customs." Now all that the Supreme Court held was that one of his liberties or free customs was to be able to earn his living by baking bread, and that the length of his working day could not be measured by the State.

I agree with Mr. Roosevelt in thinking that this decision was wrong. But suppose we had the recall of judicial decision and recalled it. What is to be the effect? Do we recall Chapter 39 of Magna Carta and the corresponding clauses in the New York constitution and the fourteenth amendment to the Constitution of the United States? That is a conclusion from which most of us would shrink. The fabric of Anglo-Saxon liberty depends upon Chapter 39 of Magna Carta. If we are to recall it abstractly we had better do it in the method already provided, that is to say, by formal constitutional amendment with all its safeguards. I have not had the honor of recent conversation with the distinguished inventor of this reform, but I presume that he would say "Of course no; we do not recall Chapter 39 of Magna Carta, we simply recall that court decision on the Bakers' case." Very good. Let it be so. In the exact phrase of the day, where are we lawyers at? We must bow to the voice of the people. But has their voice been "with

one accord," as the old barons said the first time it was proposed to "change the laws of England"—that is, to change the Constitution or Magna Carta, or have they merely punched a hole in it in the particular matter of bakers? If the latter be our conclusion, does that hole make a precedent for other holes—as I saw it well put in some newspaper—are we like Rip Van Winkle, not to count this time, not to consider it a precedent for other similar holes—or are we to count this time? If the latter, will it not, as in Rip Van Winkle's case, tend to become a habit, and if so, how soon will our Constitution cease to be one of total abstinence? Let us face this conclusion squarely. Under the recall of judicial decision there would be no Constitution at all. We must not cry out at this conclusion, but take it in all gravity. There are many earnest people who consciously desire it, not only Governor Blease of South Carolina, but good citizens, even some judges.

There has always been a school which did not believe that acts of the legislature should be referable to the courts, a school which believed that the Constitution, as in England and France, is only binding upon the conscience of the legislature. I was recently interrupted in a political speech by a workman in the gallery who cried out that he did not think that the writings of men now dead should control the actions of men now living. That is a perfectly intelligible and practicable ground. I myself value the Constitution. I do not believe that it is a written document first invented in 1789, but I hold it the final and most perfect declaration of the liberty and principles of Anglo-Saxon civilization, full of all the lessons of our history, and as such not to be disregarded, and I hope, not to be done away with. But I recognize the right of others to a different way of thinking. And my sole object in this address has been, not to take sides on this great question, pro or con, but to remind you whither these progressive paths may lead us; and to emphasize the fact, not perhaps to their discredit, that they are leading us not to fields and pastures new,[15] but through paths well worn and much beaten by the struggling footsteps of our German and our English ancestors.

[15] "A knowledge of these things guards us, at any rate, from the illusion, for illusion it must be termed, that modern constitutional freedom has been established by an astounding method of retrogressive progress; that every step towards civilization has been a step backwards towards the simple wisdom of our uncultured ancestors." Dicey's *Law of the Constitution*, sixth edition, p. 17.